Supreme Court, U.S.
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No. 94-1792

In The

Supreme Court of the United States

October Term, 1994

UNIFIED SCHOOL DISTRICT NO. 244, *et al.*,

Petitioners,

v.

STATE OF KANSAS, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Kansas

BRIEF IN OPPOSITION

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Statement of the Case

The Kansas State Board of Education submits this Brief in Opposition to the Petition for Writ of Certiorari filed by Unified School District No. 244 (Burlington, KS) and the individuals associated with that district.

For the reasons articulated below, this respondent believes the Petition fails to present any true conflict of judicial decisions regarding the federal question of an unconstitutional taking of property resulting from Kansas school financing laws. Respondent finds particularly repugnant the petitioners' selfish, parochial notions that the financing of the education of Kansas school children is solely a matter of local concern for "their" students without regard to the obvious significance education plays in American society.

Respondent further believes the claimed violation of "one person-one vote" principles is without merit on its face, and dependent entirely upon petitioners' misreading of the duties imposed on local school districts by the Kansas Constitution. Kan. Const. Art. 6, § 5. This issue is disposed of simply by this Court's acceptance of the Kansas courts' interpretation of its own state constitutional provisions regarding the respective responsibilities and degrees of control over education between the legislature, state board of education, and local school boards.

In addition, this respondent argues that as to both federal questions presented the Kansas court decisions under review turn on their unique facts and the specific state constitutional mandates attendant to the delivery of educational services in our state. This respondent, therefore, disagrees entirely with petitioners' arguments, and

urges denial of the Petition. A brief statement of facts is important to understanding the context of this dispute, and adds to what petitioners represent in their brief.

In 1992, the Kansas Legislature determined it would act in accordance with its constitutional obligations by enacting a new school finance law. Kan. Const. Art. 6, §§ 1 and 6(b). As the Kansas courts observed, this enactment required enormous work by the legislative and executive branches, representing many difficult policy decisions, some of which were politically volatile. App. 73. All other particularities aside, the polestar of the new law is equal educational opportunity for all Kansas students without regard for the wealth or poverty of the district in which the students live. As the trial court observed,

> The legislation resulted in an infusion of money for public school finance, substantially more equality in taxation, a system of accountability to the taxpayer through a mechanism to measure the results deriving from the expenditures, and improved equalization of per pupil expenditures.

App. 73. The new statute seeks to accomplish this by setting a fixed minimum and maximum range for all school district budgets. School districts are able to exceed the statutory minimums by up to 25 percent through local decision making.

Coupled with changes in the financing formula are increased accountability mandates, including periodic review of all schools through outcomes-based accreditation and implementation of various assessment measures. All of these are prepared and monitored by the Kansas State Board of Education, a constitutionally-created entity

with 10 elected members. The new law also requires other school reforms such as increased in-service training of teachers and extension of the school year. A substantial increase in expenditures for most Kansas schools resulted from passage of the Act.

Of particular importance to the federal questions presented here is the Kansas legislature's decision to impose a uniform statewide property tax on all taxable property in the state as a part of the funding component for the increased spending for public education. This uniform tax responded to complaints made against the old funding scheme which produced wide disparities in taxation. For example, in the year immediately preceding enactment of the new law, the 1991-92 general fund mill rate ranged from a low of 9.12 mills for the petitioner (U.S.D. 244) to a high of 97.84 mills. App. 117. In the first year of the new law, and with implementation of a uniform property tax, that range dramatically reduced to a low of 32 mills and a high of 66.05 mills. App. 129.

Under the previous law, petitioners enjoyed "an artificially low tax levy" to fund public education because of the presence of a huge power generating plant within district boundaries. App. 66. This circumstance blessed petitioners with the highest assessed valuation per pupil in the state ($538,138), compared to the median per pupil valuation of $28,876 elsewhere. App. 231 & App. 129. Under the new law, petitioners' levy was only 32.97 mills in 1992-93, which was approximately equal to the median mill levy (32 mills) statewide for all Kansas school districts. App. 127 & 129.

Obviously, the existence of a uniform statewide tax levy results in those school districts with extraordinary property wealth paying more in *ad valorem* taxes than is actually necessary to operate the specific schools in those particular districts. In Kansas, however, the new law caused only 10 of the 304 school districts to generate more tax revenue than required to pay for the budgets adopted locally within the minimums set out by the law. This excess revenue is sometimes referred to as "recapture" money because it is remitted to the state treasury, and then used with other state funds to help pay for education in other parts of Kansas where the property wealth is insufficient to carry the entire load of financing local schools. As the trial court found, the new law resulted in "substantially more equality in taxation." App. 73.

Reasons for Denying the Writ

(a). The claim of excessive taking

The opinions below adequately debunk Petitioners' parochial concerns over the use of "their" property wealth to help support the education of children other than "their" children. See App. 62-66 and App. 226-233. Those arguments are adopted by this respondent. As the trial court pointed out:

> [I]t is no more unconstitutional for all the taxpayers of the Burlington school district to pay taxes which benefit students throughout the state than it is for the largest taxpayer in the Burlington district, the corporate owners of the

> Wolf Creek Generating Plant, to pay any taxes toward education when those corporate owners have no children to educate in the public school system.
>
> In today's mobile and heterogeneous society, each taxpayer benefits or suffers from the quality or lack of quality of the education received by Kansas students. Each of us receives an indirect benefit from the education from all Kansas school children.

App. 231. The whole purpose of a uniform levy and "recapture" of any excess dollars is to equalize *ad valorem* tax levies across the state and to treat the dollars generated as state dollars. App. 227. Nonetheless, Petitioners complain because imposition of a statewide uniform tax means they now are paying the same general mill levy for public education as all other Kansas property taxpayers. Instead, petitioners argue they alone are privileged to enjoy the financial benefits of the huge power plant located in their area by paying less in taxes than other Kansans pay to educate children in the rest of the state. As the Kansas Supreme Court observed, "It would be difficult to conclude that a uniform mill rate to fund education is an excessive taking violative of the respective constitutional provisions." App. 66.

As grounds for this Court exercising its discretionary jurisdiction, petitioners assert the opinions below conflict with two decisions of this Court, specifically *Village of Norwood v. Baker*, 172 U.S. 269 (1898), and *Myles Salt Co. v. Iberia Drainage Dist.*, 239 U.S. 478 (1916). Respondent believes both cases are inapplicable because they deal with special assessments levied for public improvements

to property, while the present controversy involves a uniform statewide general tax to help support a constitutionally-mandated statewide system of public schools. See Kan. Const. Art. 6, § 1.

As the *Village of Norwood* decision itself noted, in terms of tax theory, special assessments are distinctly different from a general levy of taxes because the special assessment proceeds on a theory that the property charged therewith derives an increased value from the improvement. 172 U.S. at 279-280. A general levy of taxes, however, rests upon the ground that a citizen may be required to make contribution in return for the general benefits of government. As the *Norwood* court observed, "special assessments are a peculiar species of taxation." 172 U.S. at 280.

This respondent does not believe litigation over storm sewers and road extensions is in any way comparable to delivery of public education which this Court has repeatedly described as "perhaps the most important function of state and local governments." *Brown v. Board of Education*, 347 U.S. 483, 493 (1954). The vital role of education in a free society was articulated by this Court forty years ago as follows:

> Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing

> him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be available to all on equal terms. *Ibid.*

Kansas specifically recognizes in its constitution that education is a statewide interest. That is why the people of Kansas require in the constitution that their legislature:

> provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law. Kan. Const. Art. 6, § 1.

The state's constitution further recognizes the statewide importance of proper financing of education when it expressly mandates that the legislature "make suitable provision for finance of the educational interests of the state." Kan. Const. Art. 6, § 6(b). For petitioners to put the obvious statewide interests of public education on the same level as local sewer and road improvements is absurd.

In addition to the inapplicability of the cases petitioners claim to be in conflict, they inappropriately request this Court delve into a searching judicial scrutiny over the relative benefits of Kansas' public education system to specific geographic or demographic sectors in the state. Such an exercise directly conflicts with this Court's admonitions in *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1972) that it is not the proper role of

the federal judiciary to judge the complexities of financing and managing a statewide public school system, as well as determine a demonstrable correlation between education expenditures and the quality of education. 411 U.S. 41-43. The Court said:

> The ultimate wisdom as to these and related problems of education is not likely to be divined for all time even by the scholars who now so earnestly debate the issues. In such circumstances, the judiciary is well advised to refrain from imposing on the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever-changing conditions.

411 U.S. at 43. How else can the justices of this Court determine the benefits derived to society and particular taxpayers? Petitioners invite this judicial balancing act by conceding on page 10 of their brief that they would have no quarrel with the levy of a "*reasonable* tax" to assist the education of other district's children. (Emphasis by petitioners). Just how Petitioners expect this Court to determine the level of "reasonableness" is unknown. One can only imagine the complexity of the arguments attendant to judicially placing an indirect "value" on the public education system of a state to all of its citizens, and the expertise and familiarity with state and local conditions so necessary to making an appropriate decision about the raising and disposition of educational revenues. 411 U.S. at 41. This Court should decline this invitation to participate in such a function, as it has done in the past. *Id.*

Finally, it just doesn't make sense to claim, as petitioners do, that they have little or no interest in ensuring a strong and viable state system of public schools. This Court often has noted its abiding respect for the unique role of education and its paramount place in our free society. The provision of education is one of the most important tasks performed by government: it ranks at the very apex of the function of a state. *Ambach v. Norwick*, 441 U.S. 68, 77 (1979). See also *Pyler v. Doe*, 457 U.S. 202, 221 (1982) (public education is **not** "merely some governmental benefit"); *Wisconsin v. Yoder*, 406 U.S. 205, 213, 237, 238-239 (1972) (education is necessary to "prepare citizens to participate effectively and intelligently in our open political system"); *Abington School Dist. v. Schempp*, 374 U.S. 203, 230 (1963) (Brennan, J. concurring) (public education is a "most vital civic institution for the preservation of a democratic system of government"); *McCollum v. Board of Education*, 333 U.S. 203, 212 (1948); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Interstate Consolidated Street R. Co. v. Massachusetts*, 207 U.S. 79 (1907).

As both Kansas courts below noted in rejecting this "taking" argument:

> Education is the greatest vehicle available to the state to prepare our children to be the neighbors, parents, leaders, workers, taxpayers, citizens, voters, and patriots of tomorrow. Having small pockets of well-educated students does not support an economy or society in the 1990's and beyond. App. 64.

Put bluntly, Petitioners' selfish, parochial arguments that "their" money must only go to educate "their" children makes trivial the significant role of public education long recognized by this Court. For them to argue they do not benefit, as society in general benefits, simply because they pay the same tax rate as anybody else is repugnant. The Petition for Writ of Certiorari on this basis should be denied.

(b). The One Person-One Vote Claim

At no point in the proceedings below did petitioners establish any disparities in the legislative district representation comprising the legislature, nor did they demonstrate that any school district in the state suffered from any voter disparities. App. 165.

Petitioners' argument apparently turns on how they interpret the provisions of the Education Article to the Kansas Constitution regarding the local empowerment to raise and spend money. Kan. Const. Art. 6. However, petitioners' interpretation of the state constitutional authority of local school districts under Kan. Const. Art. 6, § 5 was expressly rejected by the courts below, and that interpretation is not a federal question subject to review by this Court.

The Kansas Supreme Court interpreted the relative responsibilities of the legislature and local school boards to determine that the empowerment petitioners assert for local school officials rests only with the legislature. In this instance, the Kansas Supreme Court concluded, "The legislature, in exercising its power to finance public schools,

did not unduly impede the power of locally elected boards to establish, operate, and maintain schools." App. 34. Therefore, unless this Court is able to interpret the Kansas Constitution's provisions regarding governance of education in a manner contrary to the existing decisions of the state's highest court, the authority which petitioners claim is diluted doesn't even exist. This respondent adopts the reasoning of the court's below, particularly the trial court's handling of this specific issue at App. 164-165.

Conclusion

The issues here present no substantial federal question worthy of this Court's attention. This dispute over the propriety of Kansas' new school finance law specifically turns on the requirements of the Kansas Constitution and the specific facts attendant to the litigants below. Most certainly, petitioners' view that education is strictly a local matter, and of no particular significance to the state where those children hopefully will live and work, is contrary to the opinions of this Court, the courts of Kansas, and common sense. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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